In the High Court of Punjab and Haryana, Chandigarh

F.A.O. No. 615 of 1987

Date of Decision: August 2, 2006

Zile Singh

…Appellant

Versus

Union of India and another

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

PRESENT: Mr. Namit Gautam, Advocate,
for the appellant.

None for the respondents.

JUDGMENT

M.M. KUMAR, J.

This order shall dispose of F.A.O. Nos. 615 and 657 of 1987 as both the appeals have arisen out of the same accident, which had taken place on 16.11.1985. The claimant-appellants in both the cases are two fathers of their deceased sons. They have invoked Section 110-D of the Motor Vehicles Act, 1939 (for brevity, 'the Act') challenging award dated 2.5.1987, passed by the Motor Accident Claims Tribunal, Karnal (for brevity, 'the Tribunal'). The

Tribunal in its award has awarded Rs. 21,600/- each in lieu of death of their two sons who were working as manual labourers/*Palledars*. In both the cases the net annual loss of dependency has been worked out to be Rs. 3,120/- and curiously the amount awarded is Rs. 21,600/-. With regard to the accident it has been categorically found that the military truck bearing No. ARK-8 IR-1997 had rammed into the civilian truck bearing No. HYC-6235 by taking a wrong side. The deceased Raju son of Phool Singh and the other Raju son of Zile Singh along with others were travelling in the civilian truck along with bags of cement. The military truck was found to be left hand driven instead of the steering being on the right hand. The Tribunal also found patent violation of Section 80 of the Act. The findings of the Tribunal are explicit from the reading of paras 11 and 12, which are as under:-

> "11. An appraisal of the testimony of the PWs aforesaid clearly shows that it was the driver of military truck who had occasioned the accident by taking a wrong side for which he owes an explanation. It may be noted that the respondents have not taken any particular defence in their written statements and have contended that the respondent No. 2 was not in any manner responsible for the mishap. This is not enough to exculpate the respondent No. 2 or else to give over riding consideration to their bald contention in the face of consistent evidence of P.W. 3 Sham Lal and P.W. 9 Jai

Singh both of whom were expected to have first rate knowledge of the circumstances leading to the accident. Strangely enough in his statement as R.W. 1 D.C. Pandey respondent No. 2 has come out with a different story when he averred that when the convoy reached near Indri Bye Pass G.T. Road a private truck came from the opposite side and hit into the right side of the military truck. He has also alleged that the civilian truck was being driven in a zig zag manner. This assertion which is beyond the case of the respondents as made out on para 24 of the written statement cannot be legally looked into. On the contrary, the mere fact that Sham Lal respondent No. 2 has made a somer sault while making a statement in the court is itself pointer to his negligent conduct leading to the existing situation. Pertinently it may be noted that in the opening linces (lines?) of his cross examination he has not denied that he has been challaned by the police for causing the present accident and that he is facing Court Martial proceedings at Halwara District Ludhiana. All these circumstances collectively suggest that it was the rash and negligent conduct of D.C. Pandey, respondent No. 2 which led to the existing situation. The photographs Ex. PA to Ex. PE of the place of occurrence bear ample testimony of

the negligent driving of respondent No. 2 from which he cannot get out.

12. It is borne out from the cross examination of R.W. 1 D.C. Pandey, respondent No. 2 that the military truck which he was driving was a left hand driven vehicle and that it carried a paint written warning to the above effect. There is nothing in the statement of the witness to show that a similar warning had been paint written on the front side of the military truck. Assuming for the sake of argument that there was any such caution about the military truck being left hand driven vehicle on its front side also it did not serve as sufficient warning to the drivers of the incoming trucks who are generally illiterate. In any case this did not amount to faithful compliance of section 80 of the Motor Vehicle Act……"

The income of the deceased in both the cases has been held to be Rs. 390/- per month, which is equivalent to Rs. 4,680/- per annum. The net loss of annual dependency after deducting 1/3rd has been worked out to be Rs. 3,120/- and the award made is for Rs. 21,600/-. Learned counsel for the appellants has argued that the deceased were 19/20 years old and even if the loss of dependency is kept at Rs. 3,120/- per annum, a suitable multiplier of 16 should have been applied. According to the learned counsel, the 2nd Schedule appended to the Motor Vehicles Act, 1988, can be relied upon as a safe guard even for calculating the amount of compensation where the

1939 Act is applicable. With regard to the assessment of income at Rs. 390/- per month by taking the Schedule of Labour Rates of Karnal District for the year 1985-86, the learned counsel has argued that imposition of maximum amount of Rs. 390/- would be unreasonable and @ Rs. 15/- per day the amount cannot be assessed at less than Rs. 450/- per month. He has also highlighted that no amount has been awarded for the loss of future prospects wherein the income of the deceased was bound to go up.

Having heard learned counsel at a considerable length, I am of the opinion that the accident has not been disputed and there is categorical finding that Section 80 of the Act has been violated which prohibits driving of any vehicle with left hand steering control without mechanical or electrical signalling device of a prescribed nature and in working order. The respondents have not challenged this finding in any appeal, therefore, this finding is liable to be upheld. I am further of the opinion that there is substance in the arguments raised on behalf of the claimant-appellants. The income of both the deceased has been assessed at a lower rate of Rs. 390/- per month, which deserves to be assessed at Rs. 450/- per month. After deducting 1/3rd, the loss of dependency would be Rs. 300/- per month. However, on the basis of future prospects enhancement of Rs. 150/- per month deserve to be added which brings the same to Rs. 450/-, as per the principle laid down in the cases of **General Manager, Kerala S.R.T.C. v. Susamma Thomas, (1994) 2 SCC 176** and **Sarla Dixit v. Balwant Yadav, (1996) 3 SCC 179**. According to the 2nd

Schedule appended with the Motor Vehicles Act, 1988, multiplier of 16 deserves to be applied. This multiplier although has been formulated for the purposes of Section 163-A of the 1988 Act, but it has been found to be a safer guidance for arriving at the amount of compensation than by any other method. The aforementioned proposition has been accepted by Hon'ble the Supreme Court in the case of **Kaushnuma Begum v. New India Assurance Co. Ltd., (2001) 2 SCC 9**. Therefore, the total award would be worked out to be Rs. 86,400/-. The Tribunal has also failed to award any amount in lieu of funeral expenses. Accordingly, Rs. 3,000/- is awarded as funeral expenses and the total amount is rounded off to Rs. 90,000/- in each of the cases.

For the reasons aforementioned, both the appeals are allowed and the award dated 2.5.1987 is modified by enhancing the amount of compensation to Rs. 90,000/- in respect of each of the claimant-appellants. The claimant-appellants shall also be entitled to interest @ 9% per annum.

(M.M. KUMAR)
JUDGE

August 2, 2006
Pkapoor